

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SILVERFERN GROUP, INC.,

Plaintiff,

- against -

ePALS CLASSROOM EXCHANGE, INC.,

Defendants.

Case No. 06 CV 15404 (LBS)

**DEFENDANT'S LOCAL CIVIL RULE 56.1 STATEMENT OF UNDISPUTED
FACTS**

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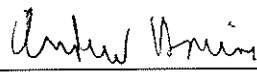
Pursuant to Rule 56.1 of the Local Civil Rules of this Court, defendant ePALS Classroom Exchange, Inc. (“ePALS”), by its undersigned counsel, submits this Statement of Undisputed Facts in support of its cross-motion for partial summary judgment seeking dismissal of Plaintiff Silverfern Group, Inc.’s (“Silverfern”) claim for attorneys’ fees and expenses.

1. On or about January 5, 2005, ePALS and Silverfern entered into a written Agreement (attached as Exhibit A to Silverfern’s Amended Complaint).
2. Section 3 of the Agreement provides that ePALS must give prior written consent to any legal fees that Silverfern incurs in connection with its engagement under the Agreement (other than for rendering an Opinion letter) in order for Silverfern to be reimbursed by ePALS for such legal fees, except as otherwise provided by Section 8 of the Agreement. *See id.*
3. Silverfern neither requested nor received ePALS’ prior written consent to incur attorneys’ fees in this action.
4. Section 8 of the Agreement specifies the terms and conditions under which Silverfern may be indemnified by ePALS, including indemnification for attorneys’ fees. *See Amended Compl., Ex. A.*
5. Section 8 of the Agreement does not explicitly and specifically provide that Silverfern shall be indemnified for any and all attorneys’ fees and expenses it incurs in litigating a breach of contract claim against ePALS. *See id.*

6. Section 8 of the Agreement contains a provision requiring that neither party will settle any litigation relating to Silverfern's engagement under the Agreement when the other party is a named defendant without the prior written consent of the other party and unless the settlement includes the release of the other party with respect to all claims asserted in such litigation. *See id.*
7. The above provision does not have any application to this action. *See id.*
8. Section 8 of the Agreement contains a provision requiring ePALS to contribute to amounts paid or payable by Silverfern under specified conditions when the indemnity referred to in Section 8 is unavailable or insufficient to hold Silverfern harmless. *See id.*
9. The above provision does not have any application to this action. *See id.*

Dated: New York, New York
March 27, 2007

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